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Attorney for Plaintiff,
TAMARA DOUKAS

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
DIVISION OF SAN FRANCISCO**

TAMARA DOUKAS, an individual,

Plaintiff,

vs.

COUNTY OF SAN MATEO, a public entity, PENINSULA HUMANE SOCIETY, a private non-profit organization, DEBI DENARDI, an individual, KIM HADDAD, an individual, KKH INC, a private entity, SPIKE REAL STATE, a private entity and DOES 1 through 50, inclusive.

Defendants.

Case No.: 08 2336 SI

**DECLARATION OF DANIEL BERKO IN
SUPPORT OF PLAINTIFF'S REPLY
MEMORANDUM RE JURISDICTION**

Hearing Date: October 3, 2008

Hearing Date: October 3
Time: 9:00 a.m.

Hearing Judge: Hon. Susan Illston

I. Daniel Berko, declare:

1. I am an attorney licensed to practice law before all the courts of the State of California and attorney of record for Plaintiff Tammy Doukas.
 2. Attached hereto as **Exhibit “A”** is a true and correct copy of a written contract between the Peninsula Humane Society (“PHS”) and the County of San Mateo by which PHS performs law enforcement services for the County of San Mateo. This contract was

DECLARATION OF DANIEL BERKO

1 produced to Plaintiff by PHS as the actual contract which authorized Animal Control
2 Office and Defendant Debi Denardi to enforce state, county and local laws at and during
3 the incident. Only "Exhibit "B" of the four exhibits is attached because the other exhibits
4 are lengthy and not relevant to the issues presented in this OSC. I will have the entire
5 contract available at the hearing on this matter.

6 3. Attached hereto as **Exhibit "B"** is the operative, presently filed, State Court complaint
7 between the parties related to the August 2, 2006 incident. There is no claim under 42
8 USC 1983 in that complaint. The caption of the complaint erroneously refers to claims
9 that were once pled, but have been removed months ago. The only claim in the complaint
10 with a "constitutional basis" is the Civil Code 52.1 claims which are very similar to a
11 claim under 42 USC 1983.

12 4. Attached hereto as **Exhibit "C"** is a true and correct copy of a "proposed Fifth Amended
13 Complaint". Plaintiff has filed a motion with the state court asking for permission to file
14 it. Because I do not know if this court will accept supplemental jurisdiction over the
15 related state claims, and because some of the claims filed in the state action probably
16 cannot be timely re-filed in this action, Plaintiff has not dismissed without prejudice the
17 state court claims.

18 5. However, I have offered to dismiss the state court complaint in its entirety without
19 prejudice, with conditions referenced in my email to all counsel of September 16, 2008 ,
20 and previously September 7, 2008 and May 9, 2008 Those emails are attached hereto as
21 **Exhibit "D"**. Some of the emails were also faxed and/or mailed to County and PHS
22 attorney Gordon & Rees.

23 6. Until I know whether this court will hear the federal and state claims alleged in this case,
24 Plaintiff can't dismiss the state claims and must pursue them in state court to protect her

1 ability to maintain the claims.
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3 7. If the court allows this case to proceed, Plaintiff will ask to file an amended complaint
4 which alleges that Defendant and PHS employee Debbi Denardi, on August 2, 2006, acted
5 in conformance with County policy (which is actually made by PHS) which allows and
6 approves of the seizure without a warrant of family pets, including their physical
7 destruction, when the animal is not a threat to any person or property and has present an
8 owner who is willing, able, and desirous, of caring for the animal. In addition, Plaintiff
9 will likely seek to amend the complaint to allege that the entire procedure by which PHS
10 is given carte blanche to enforce California and San Mateo County and numerous San
11 Mateo city laws related to animals violates at least the California constitution's separation
12 of powers provisions and due process under both the California and United States
13 constitutions. This is because the San Mateo County Superior Court both appoints Denardi
14 and all animal control officers to enforce laws and then hears and determines whether she
15 has properly enforced the laws the court appointed her to enforce. I am still investigating
16 whether there is some case law authority allowing such a situation of which I am not
17 aware, before Plaintiff adds that allegation.

18 8. Defendant's discovery responses acknowledge that witnesses who were present at and
19 during the incident include Tammy Doukas, Officer Denardi, Dr. Doukas and Ulla, Dr.
20 Walsh on the phone, Plaintiff's father Steven Doukas, her mother, Anne Doukas, and a
21 veterinary technician Julie Hutt.

22 9. I do not think my client can get a fair trial on her federal claims (or state claims) in San
23 Mateo Superior Court. Besides the fact that the court itself is responsible for Denardi's
24 appointment (see exh. A to Jato declaration), the County is also a defendant. In addition,
25 PHS is, I believe, a powerful force in San Mateo County which enjoys a not well deserved

1 reputation in the community for good works that affects Plaintiff's ability to obtain a fair
2 trial.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct and that this declaration was executed on September 19, 2008, at
5 San Francisco, California.

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9 DANIEL BERKO
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26 DECLARATION OF DANIEL BERKO
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